

People v Koch

2015 NY Slip Op 32674(U)

January 26, 2015

County Court, Westchester County

Docket Number: 14-1124-01

Judge: Barbara G. Zambelli

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FILED
AND
ENTERED ON
JANUARY 26, 2015
WESTCHESTER
COUNTY CLERK

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X

THE PEOPLE OF THE STATE OF NEW YORK

DECISION & ORDER

- against -

Indictment No.: 14-1124-01

CHRISTIAN KOCH and NEIL VERA,

Defendant.

-----X

ZAMBELLI, J.

FILED
JAN 23 2015
TIMOTHY C. IDON
COUNTY CLERK
COUNTY OF WESTCHESTER

The defendant has been indicted for perjury in the second degree, in violation of Penal Law § 210.10 and official misconduct, in violation of Penal Law § 195.00(1) allegedly committed on or about March, 21, 2014, in the County of Westchester. He now moves by notice of motion with supporting affirmation, memorandum of law and Reply affirmation for omnibus relief. The People's response consists of an affirmation in opposition and a memorandum of law. Defendant Upon consideration of these papers, as well as review of the grand jury minutes and exhibits and the consent discovery order entered in this case, the motion is disposed of as follows:

1. MOTION TO INSPECT/DISMISS/REDUCE

This application is granted to the extent that the Court has conducted an in camera inspection of the minutes of the grand jury proceedings. Defendant contends under Count 1, perjury in the second degree, his misstatements made in the affidavit in support of the search warrant were not material. Defendant relied on the statements made by Vera. He

argues that if defendant and Molina's names are excised from the affidavit, probable cause would still exist for the issuance of the warrant under Franks v. Delaware, 438 U.S. 154. Under Franks, if the statement in the affidavit in support of the warrant was knowingly false, the remedy is to delete the statement and review the sufficiency of the remaining evidence. (see, Franks v. Delaware, 438 U.S. 154; People v. Tambe, 71 N.Y.2d 492, 505) The People counter that defendant's reliance on Franks is misplaced. A Franks hearing is a suppression hearing. The materiality of false statements in an affidavit in support of a search warrant for the purpose of a perjury prosecution is unrelated to the suppression of the evidence. The validity or invalidity of the search warrant is not an element of the crime of perjury. The crime of perjury requires proof the false statement was made with the intent to mislead a public servant in the performance of his official functions and was material to the matter involved. "(T)he test of materiality is whether the false testimony was capable of influencing the tribunal on the issue before it." (People v. Tyler, 62 A.D.2d 136, 145 aff'd, 46 N.Y.2d 251). In the affidavit defendant avers he had personally participated in the events set forth in the affidavit which statements were for the purpose of satisfying the Aguilar-Spinelli rule thereby justifying the issuance of the warrant by the Judge. Thus, the evidence before the Grand Jury established this element of the crime of Perjury in the second degree.

Defense counsel further contends that defendant was improperly cross examined by the District Attorney in certain areas. After reviewing defendant's testimony before the Grand Jury, the court concludes the District Attorney's examination was well within the bounds of permissible inquiry and properly aimed at either eliciting facts and clarifying defendant's testimony or were questions bearing on defendant's credibility and did not

otherwise impair the integrity of the Grand Jury proceeding or prejudice the defendant (See, People v. Burton, 191 A.D.2d 451; People v. Karp, 76 N.Y.2d 1006).

Defendant next contends Count 1 and Count 3 are duplicitous. "Duplicitous" counts of an indictment mean one or more counts of an indictment which, individually, charge more than one offense. (See, People v. Bauman, 12 N.Y. 3d 152). Count 1 is not duplicitous since it does not charge more than one offense. The count is predicated on defendant's statements in a single document which contains multiple falsehoods. (See, People v. Ribowsky, 77 N.Y.2d 284). For similar reasons, Count 3 is not duplicitous. The People's theory of prosecution is that defendants acted in concert in making these false statements as a principal and as an accessory. The Court of Appeals has held that a trial jury need not be unanimous on whether defendant's criminal liability rests upon personal action or accessorial conduct (People v. Mateo, 2 N.Y.3d 383).

The Court further finds, that all counts were supported by sufficient evidence and that the instructions given were appropriate. Furthermore, there was no inordinate delay in instructing the jury. The Grand Jury presentation began September 17, 2014. The Grand Jury was given final instructions on October 3, 2014. There was no other infirmity which would warrant a dismissal of the indictment. Accordingly, that branch of the motion which seeks dismissal of the indictment is denied. The Court further finds no facts which would warrant releasing any portion of the minutes of the Grand Jury proceedings to the defense (see, CPL 210.30[3]).

2. MOTION FOR DISCOVERY AND INSPECTION

Defendant's request to continue to be supplied with discovery pursuant to CPL Article 240 as it becomes known and available to the People is granted.

3. MOTION FOR EXCULPATORY INFORMATION

As to the defendant's demand for exculpatory material, the People have indicated their awareness of their continuing obligation to disclose any such material immediately upon its discovery. Where a question exists as to whether a particular item should be disclosed, they are directed to submit the material or information to the Court, which will conduct an in camera examination to resolve the issue.

4. MOTION TO SUPPRESS PRIOR BAD ACTS (SANDOVAL/VENTIMIGLIA)

Granted on consent of the People to the extent that this Court directs that a hearing be held immediately prior to trial. Prior to the commencement of jury selection, the People will disclose to defendant all specific instances of his prior uncharged crimes and bad acts they expect to introduce at trial for impeachment purposes (see, CPL 240.43). Defendant must then sustain his burden of informing the Court of the prior convictions and misconduct which might unfairly affect him as a witness in his own behalf (see, People v. Matthews, 68 N.Y.2d 118 , 121-122). In the event the People seek to introduce defendant's prior bad acts on their direct case, the burden is on the People to seek a Ventimiglia hearing to determine the admissibility of such evidence (see, People v. Ventimiglia, 52 N.Y.2d 350)

5. JOIN IN CO-DEFENDANT'S MOTIONS


Defendant's application to join in the co-defendant's motions is denied.

6. MOTION TO SEVER

Defendant's motion for a severance will abide the decision of the trial court.

This decision constitutes the Order of the Court.

Dated: White Plains, New York
January 26, 2015



BARBARA G. ZAMBELLI
COUNTY COURT JUDGE

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